FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.4114 OF 2004
IN
FIRST APPEAL NO.1271 OF 2004
WITH
CIVIL APPLICATION NO.4115 OF 2004
IN
FIRST APPEAL NO.1272 OF 2004
WITH
CIVIL APPLICATION NO.4116 OF 2004
IN
FIRST APPEAL NO.1273 OF 2004
WITH
CIVIL APPLICATION NO.398 OF 2005
IN
FIRST APPEAL (ST) NO.1736 OF 2005

Office notes, office Memoranda of Coram, appearances, Court's orders or directions & Registrar's orders.	: : : : :	Court's or Judge's Orders

---

Mr. R.M. Pandey with Mr. M.U. Pande for the applicants in C.A. Nos.4114, 4115 and 4116 of 2004.

Mr. P.M. Shah for the appellants in CA No.398 of 2005.

Mr. J. Xavier for the B.M.C.

Mr. J.G. Damani for respondents 2 to 5.

CORAM: SMT. RANJANA DESAI, J.

DATED: 11TH FEBRUARY, 2005.

P.C.:-

Heard the learned counsel for the parties.

There is a challenge to notice issued under section 351 of the Bombay Municipal Corporation Act, 1888 and

the issue involved also pertains to the correct datum line. Since, this issue requires consideration, today, I have admitted the appeals. I am informed by the learned counsel for respondents 2 to 5, who are the owners of the suit property that the appellants are not paying the municipal taxes.

If the structures, which are subject matter of the suit are to be protected, the applicants will have to pay all the municipal taxes payable in respect of the structures without prejudice to the rights and contentions of the parties. The applicants will not be entitled to any equitable reliefs unless they pay the entire municipal taxes payable in respect of the suit premises. Hence, the following order:

O R D E R

"(i) Respondents 2 to 5 are directed to inform the applicants or advocate for applicants the total amount due and payable as of today in respect of the shed in question towards the property taxes payable to

respondent 1 - Corporation. Respondent 1 Corporation will also forward relevant documents in support showing the taxes payable.

(ii) The applicants are directed to pay the amount due and payable, on account of property taxes in respect of the shed to respondents 2 to 5 within a period of three months from the date of receipt of the communication from respondents 2 to 5. The said payment will be without prejudice to the rights and contentions of both the parties and subject to final result of the appeal.

(iii) Till final disposal of the appeal, respondent 1 Corporation shall not demolish the suit structure subject to condition of the applicants filing an undertaking in writing in this court within a period of three weeks from today stating therein that the applicants will not create any third party interests in respect of the suit structures, the applicants will not part with the possession of the suit structures and the applicants will not carry out any major additions

and alterations to the suit structure without the permission of this court. If the undertaking is not filed within the stipulated time, the interim relief granted will stand vacated."

In the event the applicants commit default in payment of municipal taxes as provided in this order, it will be open for respondents 2 to 5 to apply to this court for vacating the interim relief.

It is made clear that this order is passed without prejudice to the right of respondents 2 to 5 to file appropriate proceedings against the applicants in appropriate court.

There will be no orders as to costs.

Civil applications are disposed of in the aforestated terms.

All concerned to act on ordinary copy of this order duly authenticated by the Sheristedar of this court.

(SMT. RANJANA DESAI, J.)